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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 00 181 51295 Office: VERMONT SERVICE CENTER

Date: **JAN 17 2003**

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

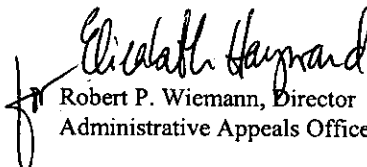
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a software engineer at Lockheed Martin Corporation. The petitioner is also an adjunct professor of Mathematics at Baltimore City Community College ("BCCC"). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner states "[b]ecause of my exceptional ability in the sciences, I will be of substantial benefit to society and also the national economy of the United States. I am now teaching as an adjunct professor for one of the finest institutions in Baltimore where I hope to educate as much [sic] students as I possibly can in the field of Mathematics/Engineering." The petitioner does not explain in any detail why he qualifies for a waiver of the job offer requirement which, by statute, normally applies to advanced degree professionals and to aliens of exceptional ability.

The petitioner submits a letter from Gisele Icore, an official of BCCC, who states that the petitioner "has always demonstrated a high level of professionalism when interacting with students and peers" but does not discuss or explain why the petitioner's work serves the national interest to such an extent that the petitioner merits a waiver of a requirement that typically applies to workers in his profession. The only other documentation accompanying the initial filing consists of copies of diplomas and training certificates.

The director requested further evidence, stating that the intrinsic merit and national scope of the petitioner's occupation are not in question, but that the petitioner had not demonstrated "that it would be contrary to the national interest" to hold the petitioner to the job offer/labor certification requirement. The director stated "it is unclear how the [petitioner's] experience and abilities set him . . . apart from other highly qualified software engineers in the field."

In response to the director's notice, the petitioner has submitted a letter from Monet Cleveland, senior human resources specialist at Lockheed Martin, who describes the petitioner's work and the basic job requirements. Ms. Cleveland deems the petitioner "a valued member of our team" but does not explain why it is in the national interest to waive the job offer requirement that normally applies to software engineers. Ms. Cleveland states that the position requires "a Bachelors degree or equivalent . . . and a minimum of one (1) year of related professional experience or a Masters with 0-2 years experience." Thus, if Lockheed Martin were to seek a labor certification on the petitioner's behalf, the petitioner would not qualify for classification as a member of the professions holding an advanced degree because the job does not require an advanced degree or its equivalent (i.e. five years of progressive post-baccalaureate experience). See 8 CFR 204.5(k)(4).

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner states "I tender my appeal to further clarify and show proof to the Service why the area of Software Engineering . . . has substantial intrinsic merit and is national in scope." As noted above, the Service has never contested that software engineering has intrinsic merit and can be national in scope depending on the circumstances of employment. The critical issue is why this particular software engineer, the petitioner, should receive a special waiver that is not routinely available to software engineers. The petitioner, in his statement on appeal does not address this question.

The petitioner had indicated that further materials would be submitted within 30 days. The only subsequent submission in the record is a letter from David B. Touros, integrated logistics engineering supervisor at Lockheed Martin. Mr. Touros states:

[The petitioner] has become our resident expert in Software Safety. He is currently performing a Software Safety Analysis on one of our newest U.S. Navy Ship Vertical Launching Systems. The function he performs is imperative in assuring the safety of this newly designed weapon system. . . . [The petitioner] has experienced two interruptions . . . that have affected his ability to carry out these important safety tasks and we have no other personnel with his expertise. These interruptions seriously affect the execution of our safety work and also impact [the petitioner's] continued career growth.

While Mr. Touros' letter marks the first attempt to distinguish the petitioner's contributions from those of other software engineers, the record does not contain sufficient evidence to establish that the petitioner is responsible for the safety of U.S. military personnel or weapons systems (an assertion not contained in the job description submitted previously) or that the petitioner has made unique contributions in this area. The assertion that no other Lockheed Martin employee possesses the same expertise does not establish that the petitioner's admission would serve the

national interest, nor does it show that the standard labor certification process would be inappropriate in this instance.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer, seeking an appropriate classification, accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.